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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,402	04/09/2004	Ralf Kessler	11270.43	8443
7590 NEIL K. NYDEGGER NYDEGGER & ASSOCIATES 348 Olive Street San Diego, CA 92103			EXAMINER SHAY, DAVID M	
			ART UNIT 3735	PAPER NUMBER
			MAIL DATE 07/16/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/821,402

Applicant(s)

KESSLER ET AL.

Examiner

david shay

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 17, 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicant argues that Bille et al do not have a scanning mechanism for moving the laser beam in an x-direction and a scanning mechanism for compensating movement of the laser beam in the x-direction. However, even assuming, arguendo, that the purely functional language “for compensating movement of the laser beam in the x-direction” were regarded as providing a structural limitation, the device of Bille et al would still read on the claimed device. Firstly, it is noted that claim terms are given their broadest reasonable interpretation consistent with the specification (see MPEP 904.01). Thus, both the movement of either of mirrors 70 or 90 as the optical channel moves; and the movement of the optical channel as a whole, can be considered as a scanning mechanism as claimed. This is clearly so, since in addition to the x-y scanning mechanism formed by mirrors 44 and 56 and their associated actuators (see column 4, lines 22-64), but the center of rotation of the optical channel is the center of curvature of the cornea, thus when the channel is repositioned, it is scanned to a different location on the surface of the cornea (see column 5, line 35 to column 6, line 68). Thus this argument is not convincing.

Claims 1-6 and 8-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bille et al.

Wherein the elements relocating the optical channel are considered to constitute the second x-direction scanner; the active mirror, is the z-scanner, since it compensates for aberrations; the coil of the solenoid positioning the galvanometer 80 is considered a voice coil; and wherein the laser beam is substantially centered on the central axis when the beam is minimally deflected from the center of the optical channel.

Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al. Bille et al teach a device such as claimed, except for the center to center distance of the

mirrors and the particular order of the scanning components. It would have been obvious to the artisan or ordinary skill to employ the claimed arrangement of optical components, since this is not critical; is well within the skill of one having ordinary skill in the art; and provides no unexpected result, and to maintain the center to center distance of the mirrors of the two x-scanner and the y-scanner, since this maintain the images conjugate, thus producing a device such as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/david shay/

Primary Examiner, Art Unit 3735